

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GENE L. MCCUTCHEON,
1509 ½ Jackson St.
Charleston, West Virginia 25311,

The CITY OF CHARLESTON
CITY COLLECTOR
915 Quarrier Street, Suite 4
Charleston, West Virginia 25301,

CITY NATIONAL BANK
25 Gatewater Road
Cross Lanes, West Virginia 25313,

TERRY HARRIS
1316 West Virginia Avenue
Dunbar, West Virginia 25064,

JESSE WILLIAMS
1316 ½ A West Virginia Avenue
Dunbar, West Virginia, 25064,

SARAH SAVILLE
182 Long Street
Enterprise, West Virginia 26568

HOLLY WELCH
431 19th Street
Dunbar, West Virginia, 25064,

TRISH MCINTRY
1519 A Lewis Street
Charleston, West Virginia, 25311

Case No. 2:16-CV-12471

LAURA TAYLOR
1519 B Lewis Street
Charleston, West Virginia 25311,

JOHN C. EDWARDS
911 ½ West Virginia Avenue
Dunbar, West Virginia 25064,

CHUCK HOLLY
1710 Virginia Avenue
Dunbar, West Virginia 25064,

VICKY HALL
407 18th Street
Dunbar, West Virginia 25064,

ALFONZO KERNZY
2015 16th Street
Dunbar, West Virginia 25064,

TRINITY DORCH
205 ½ 16th Street
Dunbar, West Virginia 25064,

GLORIA STONE
5102 C Venable Ave
Charleston, West Virginia 25304

DAVID PAINTER
4595 Clendenin Creek Road
Liberty, West Virginia 25124,

CONNIE PAINTER
4595 Clendenin Creek Road
Liberty, West Virginia 25124,

BEKAH ATKINS
1802 Payne Avenue
Dunbar, West Virginia 25064,

RICHARD RITTINGER JR.
4005 Farmington Drive
Hurricane, West Virginia 25526,

IVY FOUTS)
21864 NW 169 th Avenue)
High Spring, Florida 32643,)
)
DANIELLE SMOOT)
1514 Lewis Street)
Charleston, West Virginia 25311)
)
GABRIELLE DOTSON)
314 30 th Street)
Charleston, West Virginia 25311, and)
)
ASHLEY CASH)
97 Midway Drive)
Dunbar, West Virginia 25064)
)
Defendants.)

THIRD AMENDED COMPLAINT FOR FEDERAL TAXES

Plaintiff, the United States of America, brings this action at the request and with the authorization of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States to collect the federal income taxes and statutory additions to tax assessed against Gene L. McCutcheon (“Taxpayer”) for tax years 2003, 2005 through 2010, and 2012 through 2015, together with all accruals, including statutory interest, and penalties, and to enforce the corresponding federal tax liens that encumber certain real property located in Kanawha County, West Virginia. In support of this complaint, the United States alleges as follows:

JURISDICTION & VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402 and 7403.

2. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1396 because the Taxpayer resides within the jurisdiction of this court.

PARTIES

3. Plaintiff is the United States of America.
4. Defendant, Gene L. McCutcheon, resides within the jurisdiction of this Court in Charleston, West Virginia. Mr. McCutcheon is named as a defendant in this action because he is the taxpayer against whom the unpaid federal tax liabilities at issue in this action are assessed, and because he has an interest in the subject real property.
5. The following individuals or entities are named as defendants under 26 U.S.C. § 7403(b) because they may have or claim an interest in the real property which is the subject of this action:
 - a. The City Of Charleston located at 915 Quarrier St. Suite 4, Charleston, West Virginia 25301.
 - b. City National Bank located 25 Gatewater Road, Cross Lanes, West Virginia 25313.
 - c. Terry Harris resides at 1316 West Virginia Avenue, Dunbar, West Virginia 25313.
 - d. Jesse Williams resides at 1316 ½ A West Virginia Avenue, Dunbar, West Virginia, 25064.
 - e. Sarah Saville resides at 182 Long Street, Enterprise, West Virginia 26568.
 - f. Holly Welch resides at 431 19th Street, Dunbar, West Virginia 25064.
 - g. Trish McIntry resides at 1519 A Lewis Street, Charleston, West Virginia 25311.
 - h. Laura Taylor resides at 1519 B Lewis Street, Charleston, West Virginia 25311.
 - i. John C. Edwards resides at 911 ½ West Virginia Avenue, Dunbar, West Virginia 25064.

- j. Chuck Holly resides at 1710 Virginia Avenue, Dunbar, West Virginia 25064.
- k. Vicky Hall resides at 407 18th Street, Dunbar, West Virginia 25064.
- l. Alfonzo Kernzy resides at 2015 16th Street, Dunbar, West Virginia, 25064.
- m. Trinity Dorch resides at 205 ½ 16th Street, Dunbar, West Virginia 25064.
- n. Gloria Stone resides at 5102 C Venable Ave, Charleston, West Virginia 25304.
- o. David Painter resides at 4595 Clendenin Creek Road, Liberty, West Virginia 25124.
- p. Connie Painter resides at 4595 Clendenin Creek Road, Liberty, West Virginia 25124.
- q. Bekah Atkins resides at 1802 Payne Avenue, Dunbar, West Virginia 25064.
- r. Richard Rittinger Jr. resides at 4005 Farmington Drive, Hurrican, West Virginia 25526.
- s. Ivy Fouts resides at 21864 NW 169th Avenue, High Spring, Florida 32643.
- t. Danielle Smoot resides at 1514 Lewis Street, Charleston, West Virginia 25311.
- u. Gabrielle Dotson resides at 314 30th Street, Charleston, West Virginia 25311.
- v. Ashley Cash resides at 97 Midway Drive, Dunbar, West Virginia 25064.

COUNT I: REDUCE ASSESSMENTS TO JUDGMENT

- 6. The United States incorporates paragraphs 1 through 4 of this Complaint as if fully set forth herein.
- 7. The Taxpayer voluntarily filed his 2005 federal income tax return on November 19, 2007.
- 8. The Taxpayer voluntarily filed his 2006, 2007 and 2008 federal income tax returns on October 21, 2010.
- 9. The Taxpayer voluntarily filed his 2009 federal income tax return on October 19, 2010.
- 10. The Taxpayer voluntarily filed his 2010 federal income tax return on October 4, 2016.

11. The Internal Revenue Service prepared a return pursuant to 26 U.S.C. § 6020(b) for the Taxpayer's 2012 tax year on July 29, 2014.
12. The Taxpayer voluntarily filed his 2013 federal income tax return on October 4, 2016.
13. The Taxpayer voluntarily filed his 2014 federal income tax return on October 4, 2016.
14. The Taxpayer voluntarily filed his 2015 federal income tax return on October 7, 2016.
15. In accordance with the sworn tax returns filed by the defendant, and the 2012 tax return prepared for the defendant, Gene L. McCutcheon by the Internal Revenue Service, a delegate of the Secretary of Treasury properly and timely made assessments against the Taxpayer for unpaid federal income taxes and penalties, for the taxable periods and in the amounts shown below:

Tax Type	Tax Period Ending	Date of Assessment	Amount of Assessment	Outstanding Balance as of 12/19/2016
Income: Form 1040A	12/31/2003	12/25/2006	\$27,212.26	\$39,845.23
Income: Form 1040A	12/31/2005	9/29/2008	\$20,478.96	\$11,744.39
Income: Form 1040	12/31/2006	11/29/2010	\$3,012.22	\$1,906.10
Tax Type	Tax Period Ending	Date of Assessment	Amount of Assessment	Outstanding Balance as of 12/19/2016
Income: Form 1040	12/31/2007	11/22/2010	\$5,518.81	\$5,196.53
Income: Form 1040	12/31/2008	11/22/2010	\$17,400.32	\$4,364.65
Income: Form 1040	12/31/2009	2/7/2011	\$25,543.07	\$28,356.25
Income: Form 1040	12/31/2010	12/5/2016	\$13,764.76	\$3,998.87
Income: Form 1040A	12/31/2012	9/21/2015	\$12,448.53	\$1,648.89
Income: Form 1040	12/31/2013	12/5/2016	\$37,875.72	\$37,447.24
Income:	12/31/2014	12/5/2016	\$67,096.41	\$67,160.29

Form 1040				
Income: Form 1040	12/31/2015	11/28/2016	\$37,841.64	\$38,074.60
Total Amount Due				\$239,743.04

16. A delegate of the Secretary of the Treasury gave Taxpayer notice and demand for payment of the assessments described in paragraph 15.
17. Statutory additions to tax have accrued and will continue to accrue on the unpaid balance of the assessments set forth in paragraph 15 according to law.
18. Taxpayer has failed to pay the United States the full amount owed as a result of the tax assessments described in paragraph 15.
19. On account of the assessments described in paragraph 15, the Taxpayer is indebted to the United States in the amount of \$239,743.04 as of December 19, 2016, plus statutory additions to tax that will continue to accrue thereafter according to law until paid.

COUNT II: FORECLOSURE OF FEDERAL TAX LIENS

20. The United States incorporates paragraphs 1 through 19 by reference, as if fully set forth herein.
21. On the date of the assessments described in paragraph 15, above, tax liens in favor of the United States arose by operation of law under 26 U.S.C. § 6321 and 6322, and attached to all property and rights to property owned by taxpayer, Gene L. McCutcheon, including the nineteen parcels of real properties located in Kanawha County, West Virginia, and described in paragraph 23, below.
22. Notices of federal tax lien with respect to the tax liabilities described in paragraph 15, above, were filed with the Kanawha County Clerk on January 8, 2007, July 16, 2009, May 6, 2011, June 1, 2016, and December 16, 2016.

23. Nineteen real properties are the subject of this foreclosure action. They are:

- a. A rental property owned by Gene L. McCutcheon located at 141 Taylor Road, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 1917 at page 333.
- b. A rental property owned by Gene L. McCutcheon located at 1316 West Virginia Avenue, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2331 at page 431.
- c. One acre of land owned by Gene L. McCutcheon situated on Rocky Fork in Kanawha County, West Virginia. This property is titled in the name of Gene L. McCutcheon and is recorded with the Kanawha County Clerk in deed book 2186 at page 496.
- d. 4.5 acres of land owned by Gene L. McCutcheon situated on the Poca River in Kanawha County, West Virginia. This property is titled in the name of Gene L. McCutcheon and is recorded with the Kanawha County Clerk in deed book 2298 at page 344.
- e. A rental property owned by Gene L. McCutcheon located 512 19th Street, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2309 at page 571.
- f. A rental property owned by Gene L. McCutcheon located at 1519 Lewis Street, Charleston, West Virginia, 25311. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2364 at page 749.

- g. A rental property owned by Gene L. McCutcheon located at 431 19th Street, Dunbar West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2398 at page 322.
- h. A rental property owned by Gene L. McCutcheon located at 314 30th Street N. Charleston, West Virginia, 25311. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2802 at page 676.
- i. A rental property owned by Gene L. McCutcheon located at 823 8th Street, Nitro, West Virginia, 25143. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2856 at page 894.
- j. A rental property owned by Gene L. McCutcheon located at 1710 Virginia Avenue, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2872 at page 156.
- k. A rental property owned by Gene L. McCutcheon located at 407 18th Street, Dunbar West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2872 at page 159.
- l. A rental property owned by Gene L. McCutcheon located at 205 16th Street, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2872 at page 162.
- m. A rental property owned by Gene L. McCutcheon located at 97 Midway Drive, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L.

- McCutcheon and recorded with the Kanawha County Clerk in deed book 2889 at page 808.
- n. A rental property owned by Gene L. McCutcheon located at 2663 Bakers Fork Road, Charleston, West Virginia, 25311. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2895 at page 804.
 - o. A rental property owned by Gene L. McCutcheon located at 1802 Payne Avenue, Dunbar West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2908 at page 668.
 - p. A rental property owned by Gene L. McCutcheon located at 1316 West Virginia Avenue, Dunbar West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 1917 at page 333.
 - q. A rental property owned by Gene L. McCutcheon located at 1302 Moore Avenue, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2924 at page 152.
 - r. A rental property owned by Gene L. McCutcheon located at 1303 Fletcher Avenue, Dunbar, West Virginia, 25064. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2924 at page 152.

- s. A rental property owned by Gene L. McCutcheon located at 1514 Lewis Street, Charleston, West Virginia, 25311. This property is titled in the name of Gene L. McCutcheon and recorded with the Kanawha County Clerk in deed book 2924 at page 152.

24. The United States of America, by virtue of the tax liens that encumber the real property described in paragraph 21, above, is entitled to have the federal tax liens foreclosed, the nineteen properties sold, and the proceeds from the sale applied to the unpaid balance of the tax liabilities owned by the taxpayer, Gene L. McCutcheon.

WHEREFORE, the United States of America respectfully request judgment as follows:

- A. As to Count I, that the Court render judgment in favor of the United States and against the Defendant Gene L. McCutcheon, for the unpaid balance of his federal income tax liabilities relating to the years 2003, 2005 through 2010 and 2012 through 2015 including accrued but unassessed interest and penalties in the amount of \$239,743.04 as of December 19, 2016, plus statutory additions to tax and interest according to law after that date until paid.
- B. That the Court adjudge, determine and decree that the United States holds valid and subsisting tax liens for the federal tax liabilities described in paragraph 15, above, and that the tax liens encumber the real property listed in paragraph 23, above.
- C. As to Count II, that the Court order that the tax liens of the United States be foreclosed against the subject real properties; that the subject real properties be sold; and that the proceeds from the sale be distributed to the United States and to the other defendants accord to the respective priorities of their liens and interests in the subject real properties.
- D. That the Court award the United States its costs and expenses incurred in this action; and

E. That the Court grant the United States such other relief as it deems just and proper.

DATE: September 29, 2017

CAROL A. CASTO
United States Attorney

DAVID A. HUBBERT
Deputy Assistant Attorney General

/s/ Erin F. Darden
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